

(1) Supreme Court, U.S.  
FILED

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No.

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IN THE

Supreme Court of the United States

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ZACHARIAH L. ROSS,

*Petitioner*

v.

DEPARTMENT OF PUBLIC SAFETY, OKLAHOMA

*Respondent.*

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On Petition For Writ Of Certiorari  
To The Supreme Court of the State of Oklahoma

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PETITION FOR WRIT OF CERTIORARI

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## **QUESTIONS PRESENTED**

1. Does a state statute that automatically exacts a punishment after a specified number convictions of a certain type or types, constitute a bill of attainder or double jeopardy.
2. Does the use of same convictions specified in Question 1, to impose a punishment described in Question 1 a second time, constitute double jeopardy.
3. Is the manner in which the State of Oklahoma suspends a person's driving privileges/rights due to the accumulation of points, constitute a violation the principal of separation of powers, a violation of equal protection, a violation of the Fifth Amendment, or a violation of the Fourteenth Amendment.

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IN THE  
SUPREME COURT OF THE UNITED STATES  
  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**I. OPINIONS BELOW**

1. Order of the Oklahoma Supreme Court, the highest court for civil cases, denying discretionary review in the State of Oklahoma to review the merits appears at Appendix D to this petition and is unpublished.
2. The Opinion of the Oklahoma Court of Civil Appeals relevant to this case concerning conclusions of law to review the merits appear at Appendix A to this petition and is unpublished.
3. The judgment of the District Court of Oklahoma County to review the merits appears at Appendix B to this petition and is unpublished. The Order denying motions to review the merits of appear at Appendix C.

**II. JURISDICTION**

The date on which the highest state court denied discretionary review my case was October 3, 2005. A copy of the Order appears at Appendix D. No petition for rehearing was sought.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

### **III. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

#### **1. United States Constitution, Article I §9 ¶3:**

No bill of attainder or ex post facto Law shall be passed.

#### **2. United States Constitution, Amendment 5:**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

#### **3. United States Constitution, Amendment 14 §1:**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

#### **4. Oklahoma Constitution, Art. II §19 ¶1:**

The right of trial by jury shall be and remain inviolate, except in civil cases wherein the amount in controversy does not exceed One Thousand Five Hundred Dollars (\$1,500.00), or in criminal cases wherein punishment for the offense charged is by fine only, not exceeding One Thousand Five Hundred Dollars (\$1,500.00). Provided, however, that the Legislature may provide for jury trial in cases involving

lesser amounts. Juries for the trial of civil cases, involving more than Ten Thousand Dollars (\$10,000.00), and felony criminal cases shall consist of twelve (12) persons. All other juries shall consist of six (6) persons. However, in all cases the parties may agree on a lesser number of jurors than provided herein.

5. Oklahoma Constitution, Art. II §7:

No person shall be deprived of life, liberty, or property, without due process of law.

6. Title 47 Oklahoma Statutes §6-112 (2005):

Every licensee shall have his driver's license in his immediate possession at all times when operating a motor vehicle and shall display the same upon demand of a peace officer. However, no person charged with violating this section shall be convicted if he produces in court or the office of the arresting officer a driver's license theretofore issued to him and valid at the time of his arrest.

7. Title 47 Oklahoma Statutes §6-308(A)(B) (2005):

A. It is a misdemeanor for any person to violate any of the provisions of Section 47-6-101 et seq. of this title unless such violation is by Section 47-6-101 et seq. of this title or other law of this state declared to be a felony.

B. Unless another penalty is in Section 47-6-101 et seq. of this title or by laws of this state provided, every person convicted of a misdemeanor for the violation of any provision of Section 47-6-101 et seq. of this title shall be punished by a fine of not more than Five Hundred Dollars (\$500.00) or by imprisonment for not more than six (6) months, or by both such fine and imprisonment.

8. Title 47 Oklahoma Statutes §6-211 (2005):

This statute is lengthy and has been attached as Appendix E to this petition.

**9. Califo □ Penal Code 667(e)(2)(A) (2005):**

If a defendant has two or more prior felony convictions as defined in subdivision (d) that have been pled and proved, the term for the current felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greater of:

- (i) Three times the term otherwise provided as punishment for each current felony conviction subsequent to the two or more prior felony convictions.
- (ii) Imprisonment in the state prison for 25 years.
- (iii) The term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part2, or any period prescribed by Section 190 or 3046.

**10. Oklahoma Administrative Code 595:10-7-70(3) (2004).**

Upon the reinstatement of a person's privilege to drive after a suspension which was based on violations listed in 595:10-7-2 of these regulations, the points level shall be reduced to five (5) points or less as provided in these regulations.

**IV. STATEMENT OF THE CASE**

This case began when the Petitioner received an Order of Suspension on June 4, 2005, from the Oklahoma Department of Public Safety (DPS) informing him that his right to drive was being revoked due to points, and that he was ordered to surrender all proof of said rights by the DPS. After attending a short DPS Hearing in front of a DPS Officer, the Petitioner paid the \$250 cash appeal bond along with filing the requisite civil petition and was subsequently entered into the

Oklahoma County District Court as a case of civil relief of more than \$10,000.

During the trial the Defense presented evidence and one witness Lea Frizzell, the DPS Hearing Officer. The Petitioner raised the same arguments during the trial that he is raising now in this Petition for Certiorari. The District Court Judge oral judgment can be found in Appendix B.

The Petitioner fully complied with the District Court's order, and in appealing its decision. The DPS chose not to comply. The DPS did not issue the required permit enabling the Plaintiff to drive<sup>1</sup>. When they did finally decide to comply, it was only off and on for short periods throughout the appeal to the Oklahoma Court of Civil Appeals. During the second period that the DPS decided to violated the District Court's order, the Petitioner filed a Motion for Modification and Motion for Contempt in District Court which was denied by the Order found in Appendix C. Similar motions were filed in Court of Civil Appeals, which were denied by the Opinion found in Appendix A. A Petition for Certiorari was filed with the Oklahoma Supreme Court and was denied by the Order found in Appendix D. What I can only assume as a compromise offered due to guilt, the DPS offered to give "credit for time already served under revocation" in a proposed order spreading the mandate.

## V. REASONS FOR GRANTING THE PETITION

A. One of the issues that the Petitioner feels should be addressed by this Court is the disturbing trend that has been brought on in the past few decades, is the disguising of double jeopardy and a bill of attainder (a.k.a. trial by legislation, described in *United States v. Lovett*, 328 U.S. 303 (1946)) as legitimate extrajudicial punishment, behind previous convictions. The theory being that the summation

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<sup>1</sup> 47 O.S. §6-308(A)(B) (2005)

of convictions means that a party is also guilty of a greater crime that justifies the extrajudicial punishment. In this case, according to the Oklahoma Court of Civil Appeals Opinion in Appendix A, since the Petitioner has been found guilty of ten points worth of traffic violations, then he is also guilty of not "complying with reasonable police power requirements in the interest of public safety and welfare." At nine points you are not guilty, at ten points you are. It should be noted that the Petitioner has never been charged with such an offense.

To give the court another example, would be the various "three strike" laws that have been enacted in this country. The most well known of which is California's "Three Strikes" law<sup>2</sup>. Again, you have a law that automatically imposes the extrajudicial punishment of up to life imprisonment for a summation of crimes. The summation of violent felony convictions under this law means that a party is also guilty of being a danger to society which justifies the sentence of up to life imprisonment, even though the party has never been found guilty of the unwritten, implied crime.

There is also a second double jeopardy question in this case. Under the DPS's Points System, five points are still attached on a person's record after a suspension due to points which can be used again to suspend a license.<sup>3</sup>

**B.** The next issue concerns the equal protection and the fairness of the administrative procedure set up in this case. In the other cases where a driver's license can be suspended, you have to be found guilty of a requisite crime such as a DUI, to which the additional punishment is a revocation of your driving rights. In such cases you not only get a criminal trial but you also have the right to a civil trial to which if you can prove that a revocation of your license imposes too much hardship, you can get out of the revocation<sup>4</sup>. In such cases

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<sup>2</sup> California Penal Code 667(e)(2)(A) (2005)

<sup>3</sup> Oklahoma Administrative Code 595:10-7-70(3) (2004)

<sup>4</sup> 47 O.S. §6-211(D) (2005)

the State of Oklahoma has set up unjustified additional costs in contrast to the regular criminal trial. This means that the DPS has to maintain and install ignition interlock devices for pendency of the civil trial<sup>5</sup>. The State seems to bend over backwards in unnecessary administrative costs and procedures for DUI convictions or other convictions to which a suspension is required, but railroads people who are subject to suspension due to points.

The Petitioner in this case had to bring this case to civil court, to which the Petitioner has no right to know opposing evidence<sup>6</sup>, which are among the various other rights that would have been given in a criminal trial. The DPS is free to violate the orders of the District Court with impunity as has happened in this case where the DPS was ordered to supply the Petitioner with a temporary driving permit which they failed to do.

C. Another major issue in this case is the validity of administrative procedures in United States against one's various constitutional rights. The U.S. Constitution allows for two types of judicial procedures. Up until the early to middle 1900's, there was no such thing as administrative proceedings. Civil and Criminal procedure could handle every type of case, yet now legislature's like to invent administrative proceedings in order to skirt individual's rights in some form or another. Take the case of *Mathews v. Eldridge*, 424 U.S. 319 (1976) for example which is a removal of disability insurance benefits case. Why does government not simply say that such benefits are given under certain conditions, and that if you are drawing these benefits and don't meet the requirements; your committing a crime. The established criminal procedure fits nicely where, depending on the circumstances, bail could be set equal to the amount of benefits, and a conviction could be by fine,

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<sup>5</sup> 47 O.S. §6-211(L) (2005)

<sup>6</sup> 47 O.S. §6-211(A) (2005)

community service, or imprisonment equal to the undeserved benefits. The fact that the State had reason to terminate his benefits means they would have probable cause in such a case.

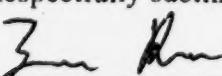
Every time a new administrative proceeding is adopted, the additional legislation that sets up additional bureaucracy at a cost that dwarfs what it would have cost the government to simply go with a standard criminal or civil procedure. Then you have to add the cost of taxing the judiciary with all the time it spends making a determination as to whether due process of law has been fulfilled in a new administrative proceeding; if it has not, you add the taxing cost of remedying the situation by the court. This again dwarfs the amount of time a court would need in determining due process of law in a standard civil or criminal proceeding.

The U.S. Constitution is contract between the government and the people it serves which is founded on the basic premise that every right, or a privilege granted to you be law, has conditions attached, violations of those conditions are known as crimes. Punishment of these crimes could be handled numerous ways, which the right to due process of law never comes into question with standard criminal procedure. This rationale worked for the first 15 years, and the Petitioner does not see why it will not work in this case. If it isn't broke, don't fix it.

#### IV. CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

  
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Zachariah L. Ross

Signed and Dated this 1st day of January, 2006.